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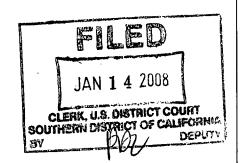
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Attorneys for Plaintiff



# UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

A. J. OLIVER,

Plaintiff,

VS.

ARIZONA SCAROB, INC. dba McDONALD'S 7554; McDONALD'S CORPORATION,

Defendants.

No. '08 CV 0 083 WQH BLM

Plaintiff's Complaint

Oliver v. McDonald's
Plaintiff's Complaint



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# I. SUMMARY

1. This is a civil rights action by plaintiff A. J. Oliver ("Oliver") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

McDonald's #7554 1288 Broadway Chula Vista, CA 91911 (hereafter "the Restaurant")

2. Oliver seeks damages, injunctive and declaratory relief, attorney fees and costs, against Arizona Scarob, Inc. dba McDonald's 7554 and McDonald's Corporation (collectively "McDonald's") pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C. §§ 12101 et seq.), and related California statutes.

# II. JURISDICTION

- 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.
- 4. Supplemental jurisdiction for claims brought under parallel California law—arising from the same nucleus of operative facts—is predicated on 28 U.S.C. § 1367.
  - 5. Oliver's claims are authorized by 28 U.S.C. §§ 2201 and 2202.

#### III. VENUE

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Southern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

#### IV. PARTIES

7. McDonald's owns, operates, or leases the Restaurant, and consists of a person (or persons), firm, or corporation.

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• The ramp

8. Oliver suffered a stroke approximately 13 years ago. The stroke left him paralyzed, speech impaired, and unable to stand or walk. Oliver requires the use of a motorized wheelchair when traveling about in public. Consequently, Oliver is "physically disabled," as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

#### V. FACTS

- 9. The Restaurant is an establishment serving food and drink, open to the public, which is intended for nonresidential use and whose operation affects commerce.
- 10. Oliver visited the Restaurant and encountered barriers (both physical and intangible) that interfered with—if not outright denied—his ability to use and enjoy the goods, services, privileges, and accommodations offered at the facility. To the extent known by Oliver, the barriers at the McDonald's included, but are not limited to, the following:
  - There is no accessible route of travel from the public transportation to the entrance;
  - There are no marked crossings and/or detectable warning where the path of travel crosses into the vehicular way;
  - There is no International Symbol of Accessibility ("ISA") along the accessible route;
  - The tow away signage is not the correct color;
  - There is no tow away signage at the entrance on Broadway and Palomar;
  - The dimensions of the van accessible space are incorrect it is too small;
  - The van accessible parking space does not have the correct signage;
  - The ISA painted in the accessible parking space is not the correct dimensions;
  - The ramp encroaches into the access aisle of the accessible parking space;

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- The flared sides of the ramp are too steep;
- The slope of the ramp is too steep;
- The pay point machine provided is too high and out of reach range limits;
- The signage on the disable seating is not correct;
- The disabled seating is too narrow;
- In the restroom, the accessible stall door is not self-closing;
- The disposable seat cover dispenser interferes with the clear floor space needed at the water closet;
- The toilet tissue dispenser is mounted above the grab bar;
- The trash receptacle is an obstruction to the clear floor space needed at the water closet;
- The lavatory controls require more than five pounds of pressure to operate;
- The pipes underneath the lavatory are improperly wrapped;
- There is insufficient toe and knee clearance underneath the lavatory; and,
- There is insufficient strike side clearance on the exterior of the restroom doors.

These barriers prevented Oliver from enjoying full and equal access.

- 11. Oliver was also deterred from visiting the Restaurant because he knew that the Restaurant's goods, services, facilities, privileges, advantages, and accommodations were unavailable to physically disabled patrons (such as himself). He continues to be deterred from visiting the Restaurant because of the future threats of injury created by these barriers.
- 12. Oliver also encountered barriers at the Restaurant, which violate state and federal law, but were unrelated to his disability. Nothing within this Complaint, however, should be construed as an allegation that Oliver is seeking to remove barriers unrelated to his disability.
- 13. McDonald's knew that these elements and areas of the Restaurant were inaccessible, violate state and federal law, and interfere with (or deny)

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access to the physically disabled. Moreover, McDonald's has the financial resources to remove these barriers from the Restaurant (without much difficulty or expense), and make the facility accessible to the physically disabled. To date, however, McDonald's refuses to either remove those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

- 14. At all relevant times, McDonald's has possessed and enjoyed sufficient control and authority to modify the subject property to remove impediments to wheelchair access and to comply with the Americans with Disabilities Act Accessibility Guidelines and Title 24 regulations. McDonald's has not removed such impediments and has not modified the subject property to conform to accessibility standards. McDonald's has intentionally maintained the subject property in its current condition and has intentionally refrained from altering the subject property so that it complies with the accessibility standards.
- 15. Oliver further alleges that the (continued) presence of barriers at the facility is so obvious as to establish McDonalds' discriminatory intent. On information and belief, Oliver avers that evidence of this discriminatory intent includes McDonalds' refusal to adhere to relevant building standards; disregard for the building plans and permits issued for the facility; conscientious decision to the architectural layout (as it currently exists) at the facility; decision not to remove barriers from the facility; and allowance that McDonalds' property continues to exist in its non-compliant state. Oliver further alleges, on information and belief, that McDonald's is not in the midst of a remodel, and that the barriers present at the facility are not isolated (or temporary) interruptions in access due to maintenance or repairs.<sup>2</sup>

E.g., Gunther v.Lin, 144 Cal.App.4th 223, fn. 6

<sup>&</sup>lt;sup>2</sup> Id.; 28 C.F.R. § 36.211(b) Oliver v. McDonald's

# VI. FIRST CLAIM

# Denial of "Full and Equal" Enjoyment and Use

Americans with Disabilities Act of 1990

- 16. Oliver incorporates the allegations contained in paragraphs 1 through 15 for this claim.
- 17. Title III of the ADA holds as a "general rule" that no individual shall be discriminated against on the basis of disability in the full and equal enjoyment (or use) of goods, services, facilities, privileges, and accommodations offered by any person who owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).
- 18. McDonald's discriminated against Oliver by denying "full and equal enjoyment" and use of the goods, services, facilities, privileges or accommodations of the Restaurant during each visit and each incident of deterrence.

# Failure to Remove Architectural Barriers in an Existing Facility

- 19. The ADA specifically prohibits failing to remove architectural barriers, which are structural in nature, in existing facilities where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term "readily achievable" is defined as "easily accomplishable and able to be carried out without much difficulty or expense." <u>Id.</u> § 12181(9).
- 20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. <u>Id.</u> § 12182(b)(2)(A)(v).
- 21. Here, Oliver alleges that McDonald's can easily remove the architectural barriers at the Restaurant without much difficulty or expense, and that McDonald's violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

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22. In the alternative, if it was not "readily achievable" for McDonald's to remove the Restaurant's barriers, then McDonald's violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

# Failure to Design and Construct an Accessible Facility

- 23. On information and belief, the Restaurant was designed or constructed (or both) after January 26, 1992—independently triggering access requirements under Title III of the ADA.
- 24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren't readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).
- 25. Here, McDonald's violated the ADA by designing or constructing (or both) the Restaurant in a manner that was not readily accessible to the physically disabled public—including Oliver—when it was structurally practical to do so.<sup>3</sup>

# Failure to Make an Altered Facility Accessible

- 26. On information and belief, the Restaurant was modified after January 26, 1992, independently triggering access requirements under the ADA.
- 27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility's primary function also requires adding making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. <u>Id.</u>

Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a private attorney general under either state or federal statutes.

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28. Here, McDonald's altered the Restaurant in a manner that violated the ADA and was not readily accessible to the physically disabled publicincluding Oliver—to the maximum extent feasible.

# Failure to Modify Existing Policies and Procedures

- 29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 30. Here, McDonald's violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Restaurant, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.
- 31. Oliver seeks all relief available under the ADA (i.e., injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.
- Oliver also seeks a finding from this Court (i.e., declaratory relief) 32. that McDonald's violated the ADA in order to pursue damages under California's Unruh Civil Rights Act or Disabled Persons Act.

## VII. SECOND CLAIM

# **Disabled Persons Act**

- 33. Oliver incorporates the allegations contained in paragraphs 1 through 30 for this claim.
- California Civil Code § 54 states, in part, that: Individuals with 34. disabilities have the same right as the general public to the full and free use of the streets, sidewalks, walkways, public buildings and facilities, and other public places.

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- 35. California Civil Code § 54.1 also states, in part, that: Individuals with disabilities shall be entitled to full and equal access to accommodations, facilities, telephone facilities, places of public accommodation, and other places to which the general public is invited.
- 36. Both sections specifically incorporate (by reference) an individual's rights under the ADA. See Civil Code §§ 54(c) and 54.1(d).
- 37. Here, McDonald's discriminated against the physically disabled public—including Oliver—by denying them full and equal access to the Restaurant. McDonald's also violated Oliver's rights under the ADA, and, therefore, infringed upon or violated (or both) Oliver's rights under the Disabled Persons Act.
- 38. <u>For each offense</u> of the Disabled Persons Act, Oliver seeks actual damages (both general and special damages), statutory minimum damages of one thousand dollars (\$1,000), declaratory relief, and any other remedy available under California Civil Code § 54.3.
- 39. He also seeks to enjoin McDonald's from violating the Disabled Persons Act (and ADA) under California Civil Code § 55, and to recover reasonable attorneys' fees and incurred under California Civil Code §§ 54.3 and 55.

#### VIII. THIRD CLAIM

# Unruh Civil Rights Act

- 40. Oliver incorporates the allegations contained in paragraphs 1 through 30 for this claim.
- 41. California Civil Code § 51 states, in part, that: All persons within the jurisdiction of this state are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever.

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Plaintiff's Complaint

- 42. California Civil Code § 51.5 also states, in part, that: No business establishment of any kind whatsoever shall discriminate against any person in this state because of the disability of the person.
- 43. California Civil Code § 51(f) specifically incorporates (by reference) an individual's rights under the ADA into the Unruh Act.
- 44. McDonalds' aforementioned acts and omissions denied the physically disabled public—including Oliver—full and equal accommodations, advantages, facilities, privileges and services in a business establishment (because of their physical disability).
- 45. These acts and omissions (including the ones that violate the ADA) denied, aided or incited a denial, or discriminated against Oliver by violating the Unruh Act.
- 46. Oliver was damaged by McDonalds' wrongful conduct, and seeks statutory minimum damages of four thousand dollars (\$4,000) for each offense.
- 47. Oliver also seeks to enjoin McDonald's from violating the Unruh Act (and ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code § 52(a).

#### IX. FOURTH CLAIM

# Denial of Full and Equal Access to Public Facilities

- 48. Oliver incorporates the allegations contained in paragraphs 1 through 13 for this claim.
- 49. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.
- 50. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

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- 51. Oliver alleges the Restaurant is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Restaurant was not exempt under Health and Safety Code § 19956.
- 52. McDonalds' non-compliance with these requirements at the Restaurant aggrieved (or potentially aggrieved) Oliver and other persons with physical disabilities. Accordingly, he seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

# X. PRAYER FOR RELIEF

WHEREFORE, Oliver prays judgment against McDonald's for:

- 1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
- 2. Declaratory relief that McDonald's violated the ADA for the purposes of Unruh Act or Disabled Persons Act damages.
- 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the California Civil Code (but not both) according to proof.
- 4. Attorneys' fees, litigation expenses, and costs of suit.<sup>4</sup>
- 5. Interest at the legal rate from the date of the filing of this action.

DATED: January 11, 2008

DISABLED ADVOCACY GROUP, APLC

LYNN HUBBARD, III Attorney for Plaintiff

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This includes attorneys' fees under California Code of Civil Procedure § 1021.5. Oliver v. McDonald's

Plaintiff's Complaint

SS 44 (Rev. 11/04)

### **CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

the civil docket sheet. (SEE IN	STRUCTIONS ON THE REVERSE OF THE FORM.)		JAN 1 4 2000 - 2001
I. (a) PLAINTIFFS		DEFENDANTS	2000 100
A.J. OLIVER	of First Listed Plaintiff SAN DIEGO		A TIONHERN DISTRICT OF CALIFORNIA
• • •	of First Listed Plaintiff SAN DIEGO  KCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First List	ed Defendant PLAINTIFF CASES ONLY)
· .	Address, and Telephone Number)	NOTE: IN LAND CONDEM	NATION CASES, USE THE LOCATION OF THE
	Y GROUP, APLC (530) 895-3252		
12 WILLIAMSBURG LA			
II. BASIS OF JURISD	ICTION (Place an "X" in One Box Only)	(For Diversity Cases Only)	'AL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
U.S. Government Plaintiff	■ 3 Federal Question (U.S. Government, Not a Party)	PTF DEF Citizen of This State 1 1 1	Incorporated or Principal Place
U.S. Government Defendant	<ul><li>4 Diversity</li><li>(Indicate Citizenship of Parties in Item III)</li></ul>	Citizen of Another State 2 0 2	2 Incorporated and Principal Place
•		Citizen or Subject of a 3 3 3 :	3 Foreign Nation
IV. NATURE OF SUIT	(Place an "X" in One Box Only)	roreign Country	
CONTRACT	TORTS		NKRUPTCY OTHER STATUTES
☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment	PERSONAL INJURY  310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 340 Marine 350 Motor Vehicle Product Liability 360 Other Personal Injury PRSONAL PROPER 371 Truth in Lending 385 Motor Vehicle Product Liability 360 Other Personal Injury PRSONAL PROPER 371 Truth in Lending 385 Property Damage Product Liability 385 Property Damage Product Liability 385 Property Damage Product Liability 385 Property Damage Sentence Habeas Corpus: 350 General 351 Motions to Vaca Sentence Habeas Corpus: 350 General 351 Death Penalty 445 Amer. w/Disabilities - Cother 440 Other Civil Rights		USC 157    430 Banks and Banking     450 Commerce     460 Deportation     470 Racketeer Influenced and     Corrupt Organizations     480 Consumer Credit     490 Cable/Sat TV     810 Selective Service     850 Securities/Commodities/     Exchange     875 Customer Challenge     12 USC 3410     890 Other Statutory Actions
Ø1 Original D 2	State Court Appellate Court	Reinstated or Reopened 5 Transferred from another district (specify)  are filing (Do not cite jurisdictional statutes	Multidistrict Magistrate Litigation Judgment
VI. CAUSE OF ACTION	ON  Cite the U.S. Civil Statute under which you a 42 U.S.C. Section 12101, et sectio	are filing (Do not cite jurisdictional statutes q. enstruction Standards	
VII. REQUESTED IN COMPLAINT:	CHECK IF THIS IS A CLASS ACTIO UNDER F.R.C.P. 23	N DEMANDS	CHECK YES only if demanded in complaint:  JURY DEMAND:
VIII. RELATED CAS IF ANY	E(S) (See instructions): JUDGE	DOCF	KET NUMBER
DATE SIGNATURE OF ATTOP OF RECORD			

01/11/2008
FOR OFFICE USE ONLY

RECEIPT # 146406 AMOUNT \$350- 1/15/08 BPPLYING IFP

JUDGE

MAG. JUDGE

#### **UNITED STATES** DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA SAN DIEGO DIVISION

# 146406 . \* \* C O P Y \* \* January 15, 2008 09:35:53

#### Civ Fil Non-Pris

" USAO;#.: 08CV0083 CIVIL FILING

Judge..: WILLIAM Q HAYES

Amount.:

\$350.00 CK

Check#.: BC# 20554

Total-> \$350.00

FROM: OLIVER V. MCDONALD'S ET AL

CIVIL FILING